

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 9, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2016AP461
STATE OF WISCONSIN**

Cir. Ct. No. 2013ME176

**IN COURT OF APPEALS
DISTRICT II**

**IN THE MATTER OF THE MENTAL COMMITMENT AND INVOLUNTARY
MEDICATION AND TREATMENT OF J.L.H.:**

SHEBOYGAN COUNTY,

PETITIONER-RESPONDENT,

v.

J.L.H.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Sheboygan County:
JAMES J. BOLGERT, Judge. *Affirmed.*

¶1 HAGEDORN, J.¹ J.L.H. suffers from schizophrenia, intermittent explosive disorder, and a mental disability. He had previously been committed under WIS. STAT. ch. 51, and Sheboygan County sought an extension of that commitment. The County also sought an order for involuntary medication and treatment under WIS. STAT. § 51.61(1)(g)4. The court concluded that J.L.H. was a proper subject for treatment and ordered an extension of his commitment. The court also granted the order for involuntary medication. It reasoned that J.L.H. was not competent to refuse treatment because he was substantially incapable of applying an understanding of treatment to his mental illness. J.L.H. appeals from these orders on the grounds that the evidence was insufficient. We disagree and affirm.

¶2 In order for the circuit court to extend a person’s commitment and order involuntary medication, the “petitioner”—in this case, the County—must prove by clear and convincing evidence that the elements of WIS. STAT. §§ 51.20 and 51.61 have been satisfied. *See* §§ 51.20(13)(e), (16)(d) & 51.61(1)(g)2., 4. We will not reverse the circuit court’s factual findings unless clearly erroneous. *Outagamie Cty. v. Melanie L.*, 2013 WI 67, ¶38, 349 Wis. 2d 148, 833 N.W.2d 607. However, whether the County met its burden is a question of law we review de novo. *See id.*, ¶¶37, 39.

¶3 Regarding the commitment, the County needed to prove (1) J.L.H. suffered from a mental illness, (2) he was a danger to himself or others, and (3) he was a proper subject for treatment. WIS. STAT. § 51.20(1)(a), (13)(e); WIS. STAT.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

CIVIL 7050. J.L.H. concedes that he is mentally ill and dangerous to himself and others. However, he argues that he was not a proper subject for treatment because medication only controlled his symptoms; it did not treat the underlying illness. We disagree. To be a proper subject for treatment, an individual must be capable of rehabilitation. *Fond du Lac Cty. v. Helen E.F.*, 2012 WI 50, ¶30, 340 Wis. 2d 500, 814 N.W.2d 179. Despite J.L.H.’s insistence otherwise, rehabilitation includes controlling the symptoms of mental illness even if the underlying disorder is incurable. *See C.J. v. State*, 120 Wis. 2d 355, 360, 354 N.W.2d 219 (Ct. App. 1984) (“An individual with an incurable physical or mental illness or disability may still be considered capable of rehabilitation and able to benefit from treatment in the sense that symptoms can be controlled and the ability to manage the illness ameliorated.”).²

¶4 Dr. Cary Kohlenberg, who examined J.L.H., testified that although J.L.H.’s schizophrenia would most likely never be cured, the symptoms could be treated and mitigated. The medication was necessary to “help with [the] voices,” and without it J.L.H.’s “symptoms would significantly worsen.” Kohlenberg further testified that without continuing treatment, J.L.H.’s “dangerous ... as well as psychotic behaviors would significantly increase.” On this testimony, the court concluded that J.L.H. was a proper subject for treatment. This evidence is clearly

² J.L.H. contends that WIS. STAT. ch. 55 is a more appropriate mechanism to deal with his mental illness and that interpreting WIS. STAT. ch. 51 as the court did here blurs the distinction between ch. 55 and ch. 51 commitments. The law is clear, however, that control of symptoms and increased ability to manage the illness is sufficient to make one a proper subject of treatment under ch. 51. *See C.J. v. State*, 120 Wis. 2d 355, 360, 354 N.W.2d 219 (Ct. App. 1984). Any modification of that will have to come from the supreme court. We note that our decision on a ch. 51 commitment in *Waukesha Cty. v. J.W.J.*, No. 2016AP46, unpublished slip op. (WI App May 4, 2016), *review granted* (WI Sept. 13, 2016), is currently pending before the supreme court.

sufficient to support the circuit court's conclusion that J.L.H. was capable of rehabilitation and a proper subject for treatment.

¶5 We also affirm the circuit court's order for involuntary medication and treatment. To order such treatment, the County needed to prove that "the advantages and disadvantages of and alternatives to accepting the particular medication or treatment [had] been explained to" J.L.H.³ and either (1) J.L.H. was "incapable of expressing an understanding of the advantages and disadvantages" of medication or (2) J.L.H. was "substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his ... mental illness ... to make an informed choice." WIS. STAT. § 51.61(1)(g)4.; *see also Melanie L.*, 349 Wis. 2d 148, ¶¶53, 67. Kohlenberg attempted to explain the benefits of medication, its potential side effects, and alternatives to medication to J.L.H. However, he testified that, in his view, J.L.H. had no "insight into his condition" and did not understand the advantages and disadvantages "to any degree."⁴ This testimony amply demonstrated J.L.H.'s lack of understanding regarding his condition and the various treatments for it. As a result, sufficient evidence supports the circuit court's conclusion that J.L.H. was not competent to refuse medication. *See* § 51.61(1)(g)4.

By the Court.—Orders affirmed.

³ J.L.H. admits that "Kohlenberg testified that he gave [him] the required explanation." Thus, we need only address whether the County proved the other elements.

⁴ Kohlenberg testified that "I attempted to explain [the advantages and disadvantages of psychotropic medication], but I really don't want to use the word explain, because to me that denotes that [J.L.H.] understood. I don't think he understood."

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)4.

